

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 27, 2019

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

*Ex Parte:* In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

CASE NO. SEC-2019-00024

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

**Proposed Revision to Chapter 20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer. Prohibited Business Conduct**

Under certain provisions of Chapter 20, a broker-dealer is required to make securities trades and disburse funds from customer accounts within a prescribed period of time. The proposed amendment to Chapter 20 provides for an exception to these provisions to allow broker-dealers to protect vulnerable customers from potential financial exploitation by permitting the broker-dealer to delay or refuse such transactions and disbursements.

Financial exploitation is the fastest growing category of elder abuse in many states. It is estimated that one in every five older adults have been victimized by financial fraud. These frauds can be perpetrated by strangers, con artists, or even family members and caregivers in whom these adults place their trust. During the 2019 General Assembly, the legislature addressed the growing issue of financial exploitation of vulnerable adults by passing a new subsection L to § 63.2-1606 of the Code for the Protection of Aged or Incapacitated Adults.

This new subsection allows financial institutions to delay transactions and refuse disbursements from the accounts of vulnerable adults where the financial institution suspects financial exploitation. With this new subsection a broker-dealer's staff can report any information or records to the appropriate authorities if the staff has a good faith belief that the transaction or disbursement may involve financial exploitation of such adults. If the broker-dealer staff follows the requirements of the new subsection, they will be immune from civil or criminal liability, absent gross negligence or willful misconduct.

To effectuate the new statute subsection, the Division of Securities and Retail Franchising ("Division") proposes to add a subsection E to Commission Rule 21 VAC 5-20-280. The new subsection would allow a broker-dealer to delay distributions or refuse transactions if the broker-dealer complies with § 63.2-1606 L of the Code.

In addition, Documents Incorporated by Reference in Chapter 21 VAC 5-20-280 contain revisions to certain rules pertaining to continuing education adopted by federal self-regulatory organizations, including rule revisions for: (1) one revised effective October 1, 2018, by the Financial Industry Regulatory Authority ("FINRA"); (2) one revised effective October 1, 2018, by the New York Stock Exchange (superseded by new FINRA rule); and (3) one revised by the Municipal Securities Rulemaking Board.

**Proposed Revision to Chapter 80. Investment Advisors.**

**A. Dishonest or Unethical Practices.**

**I. Proposed New Subsection E.** Just as with the broker-dealers, the new legislation protecting vulnerable adults from financial exploitation, the Division proposes that new § 63.2-1606 L of the Code apply to the practices of investment advisors. Investment advisors are charged with acting in the best interests of their clients and should do all they can to protect them from financial exploitation. The Division proposes to add a subsection under the Dishonest or Unethical Practices of Chapter 80 to provide investment advisors the same relief under § 63.2-1606 L of the Code as the Division proposes for broker-dealers.

**II. Proposed New Subsection F.** Over twenty years ago, investors had a choice of investing with a firm that required arbitration or one that recognized a judicial forum for disputes. Today, almost all financial services contracts offered by broker-dealers includes a mandatory predispute arbitration provision that forces public investors to submit all disputes that they may have to mandatory arbitration. Many investors are not aware of this provision, nor do they have a choice, as all disputes are conducted through a single securities arbitration forum maintained by the securities industry.

In 1996, the United States ("U.S.") Congress ("Congress") passed legislation entitled the National Securities Markets Improvement Act ("NSMIA").<sup>1</sup> NSMIA effectively divided the regulation of investment advisors between the U.S. Securities and Exchange Commission ("SEC") and the states. In general, primary jurisdiction of investment advisors (known as state-covered advisors) with less than \$100 million in assets under management fall under state regulation.

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<sup>1</sup> Pub.L.No. 104-290, 110 Stat. 3415 (codified through various parts of 15 U.S.C. 2006).

However, the state-covered investment advisors are now including boilerplate mandatory arbitration provisions in their clients' contracts. The Division believes, as do many other states, that these "take-it-or-leave-it" clauses in client contracts is inherently unfair to investors. It is particularly unfair when an investment advisor is required by law to act in the best interests of their clients. An investment advisor should not be allowed to force clients to bring any disputes to a forum of the investment advisor's choosing by contract.

Therefore, the Division proposes to add a new subsection F to the Dishonest or Unethical Practices section of Chapter 80 to prohibit mandatory arbitration clauses in investment advisory contracts. There is nothing to prevent the investment advisor and their client from agreeing to arbitrated disputes after negotiation and discussion between each. To require mandatory arbitration in standard investment advisor contracts is contrary to the investment advisors mandate to act in the best interest of their clients.

**B. Proposed Investment Advisor Information Security and Privacy Rule.**

In recent years, both state and federal regulators have been concerned about data privacy and security in the financial markets. By a vote of its members on May 18, 2019, the North American Securities Administrators Association ("NASAA"),<sup>2</sup> adopted a model rule to address the basic structure for how state-registered investment advisors may design their information security policies and procedures. The new Model Rule requires investment advisors to adopt policies and procedures regarding information security and to deliver its privacy policy annually to clients. The Model Rule was adopted to create uniformity in both state regulation and state-registered investment advisors.

**I. Proposed New Section 260. Information Security and Privacy.** This new section will be added to the rules for investment advisors to establish the minimum policies and procedures

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<sup>2</sup> NASAA is the membership organization of state securities regulators.

to protect client information and provide information privacy. The current Commission rules require the delivery of the investment advisor's privacy policy on a yearly basis, but the proposed new rule would further refine that requirement. In addition, the model rule adds the new requirements for client information security.

## **II. Proposed Amendments to Section 10. Application for Registration As an Investment Advisor and Notice Filing As a Federal Covered Advisor.**

The proposed amendments add the information and cyber security policy and procedures to the list of required documents to be filed by investment advisor applicants. In addition, the proposed amendment requires the investment advisor to file a copy of their privacy policy, as required for the proposed new rule.

## **III. Proposed Amendment to Section 160 A. Recordkeeping Requirements for Investment Advisors.**

Under section 160, investment advisors are required to keep certain records. These records are used by the Division staff to determine compliance with the securities laws and regulations. This amendment will add a new subsection 25 which will add the requirement that investment advisors keep a copy of the policies and procedures required by the proposed new section 260.

## **IV. Proposed Amendments to Section 200. Dishonest or Unethical Practices**

(a) **Prohibited conduct regarding privacy of information.** Currently, subsection 14 of 200 A requires investment advisors to protect their client's information and makes it a violation for the investment advisor to fail to comply with any applicable privacy provision or standard promulgated by the SEC or any self-regulatory organization approved by the SEC. Now that the NASAA membership has adopted similar requirements in the Model Rule, the Division proposes to amend this section to conform it to the new Model Rule. The proposed

amendment removes the reference to the SEC and self-regulatory organizations since the state-covered advisors will be governed by the new section 260, if adopted.

**(b) Prohibited conduct regarding an investment advisor's failure to report an unauthorized access of a client's information to the Division and the client.** The consequences of unauthorized access to a client's information could be devastating to the client. To address that, the Division proposes a new subsection G to section 200. The proposed new subsection makes it a dishonest or unethical practice for an investment advisor or investment advisor representative to fail to report such unauthorized access to the Division and the client within three business days of discovery. If properly reported, the Division can work with the investment advisor and investment advisor representative to take the appropriate measures to limit the damage and prevent further unauthorized access.

**Proposed Revision to Chapter 30. Adoption of NASAA. Statements of Policy.**

The Division is a member of NASAA, the association of state securities regulatory agencies. As a part of its mission to provide a uniform approach to the state regulation of securities, the Division, along with the member states, develops and adopts statements of policy that apply to the registration of securities. From time-to-time, NASAA amends these statements of policy to keep them current and address changes in the types of products offered by industry members, as well the changing norms for the standards that will apply to those registrations.

The proposed amendment updates a number of these statements of policy, including (1) underwriting expenses; (2) unsound financial condition; (3) corporate securities definitions; and (4) loans and other material transactions. NASAA vetted the proposed amendments by providing public notice and opportunity to comment. Following the expiration of the comment period, the revisions were adopted in May of 2018 by a vote of the NASAA members.

In addition, Documents Incorporated by Reference in Chapter 21 VAC5-30, will be updated to include all Statements of Policy previously adopted by the Commission in Section 8.

**Proposed Revisions to Chapter 45. Offerings conducted pursuant to Rule 506 of Regulation D (17 CFR 230.506): Filing Requirements and issuer-agent exemption.**

Many securities offerings today are made through a federal exemption known as Rule 506, which allows an issuer of securities who meets the requirements of the exemption to offer and sell securities in every state without registration. As a part of the adoption of this federal regulation, Congress provided a means for states to monitor these offerings in their state by allowing the states to accept notice filings made under the federal regulation.

To make such notices uniform among the states, the Division adopted this rule to provide for the notice filing through the use of the filing form developed by the SEC, known as Form D. Over the years since Form D was adopted, the SEC has amended the form. In order to make it easier to keep up with the changes to Form D, and to allow the securities industry to use the appropriate form, the Division proposes to drop the date of adoption of Form D from the body of the regulation and instead update its form list (attached hereto to this Order), as necessary.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: [www.scc.virginia.gov/srf](http://www.scc.virginia.gov/srf). Any comments to the proposed rules must be received by August 9, 2019.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) On or before August 9, 2019, comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. A request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2019-00024. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY HEREOF shall be sent to the Director of the Division of Securities and Retail Franchising who shall forthwith mail a copy of this Order to any interested persons as he may designate.



**STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL  
FRANCHISING**

**Securities Rules 2019**

**21VAC5-20-280. Prohibited business conduct.**

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the

diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;
6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;
7. Fail to segregate customers' free securities or securities held in safekeeping;
8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;
9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, either by (i) hard copy prospectus delivery or (ii) electronic prospectus delivery;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated

in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

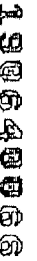
17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which

purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;



21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

- a. Utilize advantageous breakpoints without reasonable basis for their exclusion;
- b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or
- c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction and apprise the customer of the breakpoint opportunities;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities that indicates or implies that the user has special certification or

training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).



e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;
2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;
4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this Commonwealth with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;
6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, or 32 of this section;
7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or
8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not

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5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. a. In addition to the application of the general anti-fraud provisions against anyone in connection with practices similar in nature to the practices discussed in this subdivision 6, the following subdivisions (1) through (6) specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities except those exempt from registration under 21VAC5-40-50:

(1) Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

(2) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, this subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

(3) Conducting sales contests in a particular security.

(4) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(5) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

b. Although subdivisions D 6 a (1) through (6) of this section do not apply to OTC unlisted non-NASDAQ equity securities exempt from registration under 21VAC5-40-50, nothing in this subsection precludes application of the general anti-fraud provisions against anyone in connection with practices similar in nature to the practices discussed in subdivisions D 6 a (1) through (6) of this section.

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice, privacy, or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in

connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

E. A broker-dealer or an agent may delay or refuse a transaction or a disbursement of funds that may involve or result in the financial exploitation of an individual pursuant to §63.2-1606 L of the Code of Virginia.

#### DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)

~~Rule 1250~~ Rule 1240 of FINRA By-Laws, Continuing Education Requirements, amended by ~~SR-FINRA-2011-013~~ SR-FINRA-2017-007, eff. ~~October 17, 2014~~ October 1, 2018, Financial Industry Regulatory Authority, Inc.

Rule 345 A of the New York Stock Exchange Rules, Continuing Education for Registered Persons, effective as existed July 1, 1995, New York Stock Exchange, superseded by Financial Industry Regulation Authority, Inc. Rule 1200 Series - Rule, 1240, eff. October 1, 2018.

~~Rule G-3(h)~~ Rule G-3(i) of the Municipal Securities Rulemaking Board, Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements, effective as existed July 1, 1995, Municipal Securities Rulemaking Board.

Rule 341A of the New York Stock Exchange Market Rules, Continuing Education for Registered Persons, effective as existed May 14, 2012, New York Stock Exchange.



Rule 9.3A of the Chicago Board Options Exchange, Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Board Options Exchange.

Article VI, Rule 11 of the Rules of the Chicago Stock Exchange, Inc., Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Stock Exchange, Inc.

FINRA, Rule 2264, Margin Disclosure Statement, amended by SR-FINRA-2011-065, eff. December 5, 2011.

Article I, Paragraph u of FINRA By-Laws, amended by SR-FINRA-2008-0026, eff. December 15, 2008.

**21VAC5-30-80. Adoption of North American Securities Administration Association, Inc. statements of policy.**

The commission adopts the following North American Securities Administration Association, Inc. (NASAA) statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended ~~March 31, 2008~~ May 6, 2018.
3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended May 6, 2012.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended ~~March 31, 2008~~ May 6, 2018.

7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended ~~March 31, 2008~~ May 6, 2018.
12. Church Extension Fund Securities, as amended April 18, 2004.
13. Promotional Shares, as amended March 31, 2008.
14. Loans and Other Material Transactions, as amended ~~March 31, 2008~~ May 6, 2018.
15. Impoundment of Proceeds, as amended March 31, 2008.
16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

#### DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-30)

Statement of Policy Regarding Church Extension Fund Securities, ~~adopted April 17, 1994, as~~  
amended April 18, 2004, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Options and Warrants, as amended March 31, 2008, North  
American Securities Administrators Association, Inc.

Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling  
Expenses and Selling Security Holders, as amended May 6, 2018, North American Securities  
Administrators Association, Inc.

Statement of Policy Regarding Real Estate Programs, as amended May 7, 2007, North  
American Securities Administrators Association, Inc.

Statement of Policy Regarding Oil and Gas Programs, as amended May 6, 2012, North  
American Securities Administrators Association, Inc.

Statement of Policy Regarding Cattle-Feeding Programs, as adopted September 17, 1980,  
North American Securities Administrators Association, Inc.

Statement of Policy Regarding Unsound Financial Condition, as amended May 6, 2018, North  
American Securities Administrators Association, Inc.

Statement of Policy Regarding Real Estate Investment Trusts, as amended May 7, 2007,  
North American Securities Administrators Association, Inc.

Statement of Policy Regarding Church Bonds, as adopted April 29, 1981, North American  
Securities Administrators Association, Inc.

Statement of Policy Regarding Small Company Offering Registrations, as adopted April 28,  
1996, North American Securities Administrators Association, Inc.

NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002, North  
American Securities Administrators Association, Inc.

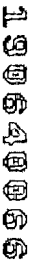
Statement of Policy Regarding Corporate Securities Definitions, as amended May 6, 2018,  
North American Securities Administrators Association, Inc.

Statement of Policy Regarding Promotional Shares, as amended March 31, 2008, North  
American Securities Administrators Association, Inc.

Statement of Policy Regarding Loans and Other Material Transactions, as amended May 6,  
2018, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Impoundment of Proceeds, as amended March 31, 2008,  
North American Securities Administrators Association, Inc.

Statement of Policy Regarding Electronic Offering Documents and Electronic Signatures, as  
adopted May 8, 2017, North American Securities Administrators Association, Inc.



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**21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR 230.506): Filing requirements and issuer-agent exemption.**

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.
2. A filing fee of \$250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC, ~~and in effect on September 23, 2013,~~ entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

**FORMS (21VAC5-45)**

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. ~~2/2012~~ 5/2017)

Uniform Consent to Service of Process, Form U-2 (rev. 7/2017)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Form NF - Uniform Investment Company Notice Filing (4/1997)

Uniform Notice of Federal Crowdfunding Offering, Form U-CF (undated, filed 9/2017)



## Part I

Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration,  
Renewal, Updates and Amendments, Terminations and Merger or Consolidation

### **21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.**

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of IARD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor unless the applicant submits the following executed forms, fee, and information:

1. Form ADV Parts 1 and 2 submitted to IARD.
2. The statutory fee made payable to FINRA in the amount of \$200 submitted to IARD pursuant to § 13.1-505 F of the Act.
3. A copy of the client agreement.
4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.
5. Copies of all advertising materials.
6. Copies of all stationery and business cards.
7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment advisors domiciled outside of Virginia an affidavit stating that the advisor has fewer than six clients in the prior 12-month period.

8. An audited or certified balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment advisor not more than 90 days prior to the date of such filing.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. Evidence of at least one qualified individual with an investment advisor representative registration pending on IARD on behalf of the investment advisor.

11. ~~Any other information the commission may require.~~ A copy of the firm's physical security and cybersecurity policies and procedures as required by 21VAC5-80-260 A.

12. A copy of the firm's privacy policy as required by 21VAC5-80-260 B.

13. Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles. Net worth shall not include: prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any

one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the IARD.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the federal covered advisor submits the following executed forms, fee, and information:

1. Form ADV Parts 1 and 2.
2. A fee made payable to FINRA in the amount of \$200.

**21VAC5-80-160. Recordkeeping requirements for investment advisors.**

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the





investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

- (1) Any person in a control relationship to the investment adviser;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction

shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

- (1) Any person in a control relationship to the investment advisor;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any

investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21VAC5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

- a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;
- b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and
- c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice,

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision F of 21VAC5-80-170.

22. Copies, with original signatures of the investment advisor's appropriate signatory and the investment advisor representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs U4) must be retained by the investment advisor (filing on behalf of the investment advisor representative) and must be made available for inspection upon regulatory request.

23. Where the advisor inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within three business days of receipt, the advisor will be considered as not having custody but shall keep the following record to identify all securities or funds held or obtained relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- a. Issuer;
  - b. Type of security and series;
  - c. Date of issue;
  - d. For debt instruments, the denomination, interest rate and maturity date;
  - e. Certificate number, including alphabetical prefix or suffix;
  - f. Name in which registered;
  - g. Date given to the advisor;
  - h. Date sent to client or sender;
  - i. Form of delivery to client or sender, or copy of the form of delivery to client or sender;
- and

j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

24. If an investment advisor obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under subdivision C 2 of 21VAC5-80-146, the advisor shall keep the following records:

a. A record showing the issuer or current transfer agent's name address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

b. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

25. Any records required pursuant to 21VAC5-80-260.

B. 1. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

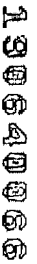
a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.



- d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
  - e. A copy of any records required to be made and kept under 21VAC5-80-146.
  - f. A copy of any and all documents executed by the client (including a limited power of attorney) under which the advisor is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the advisor's instruction to the custodian.
  - g. A copy of each of the client's quarterly account statements as generated and delivered by the qualified custodian. If the advisor also generates a statement that is delivered to the client, the advisor shall also maintain copies of such statements along with the date such statements were sent to the clients.
  - h. If applicable to the advisor's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.
  - i. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
  - j. If applicable, evidence of the client's designation of an independent representative.
2. If an investment advisor has custody because it advises a pooled investment vehicle, as defined in 21VAC5-80-146 A in the definition of custody in clause 1 c, the advisor shall also keep the following records:
- a. True, accurate, and current account statements;



b. Where the advisor complies with 21VAC5-80-146 C 4, the records required to be made and kept shall include:

- (1) The date or dates of the audit;
- (2) A copy of the audited financial statements; and
- (3) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

c. Where the advisor complies with 21VAC5-80-146 B 5, the records required to be made and kept shall include:

- (1) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
- (2) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
2. For each security in which any client has a current position, information from which the investment advisor can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 22, inclusive, of this section shall be maintained and preserved in an easily

accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

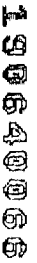
1. The identity of individuals that will conduct or wind down business on behalf of the investment advisor in the event of death or incapacity of key persons;
2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;
  - a. Notification shall be provided to the Division of Securities and Retail Franchising via IARD/CRD within 24 hours of the death or incapacity of key persons.

- b. Notification shall be given to clients within five business days from the death or incapacity of key persons.
- 3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the clients' portfolio to another advisor can be achieved or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs;
- 4. Means for the credit demands of the investment advisor to be met; and
- 5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where the books and records will be maintained during such period.

H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

- a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;



c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.



K. For purposes of this section, "principal place of business" and "principal office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

**21VAC5-80-200. Dishonest or unethical practices.**

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.



3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This



prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

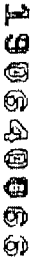
b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment



advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice

or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (i) Any analysis, report, or publication concerning securities;
- (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client, ~~or failing to comply with any applicable privacy provision or standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.~~

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

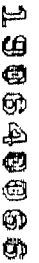
(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;



(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

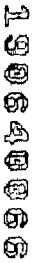
For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.



9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

- b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

- a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;



b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

- f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (i) Any analysis, report, or publication concerning securities;
- (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract





(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

- (a) Is primarily engaged in the business of instruction in sales or marketing;
- (b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
- (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
- (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or
- (3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

E. An investment advisor or investment advisor representative may delay or refuse to place an order or to disburse funds that may involve or result in the financial exploitation of an individual pursuant to §63.2-1606 L of the Code of Virginia.

F. For purposes of the section, any mandatory arbitration provision in an advisory contract shall be prohibited.

G. The investment advisor and investment advisor representative shall notify the Division and the client of an unauthorized access to records that may expose a client's identity or investments to a third party within three business days of the discovery of the unauthorized access.

**21VAC5-80-260. Information security and privacy.**

A. Every investment advisor registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures shall be tailored to the investment advisor's business model, taking into account the size of the firm, type of services provided, and the number of locations of the investment advisor.

1. The physical security and cybersecurity policies and procedures shall:

- a. Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;
- b. Ensure that the investment advisor safeguards confidential client records and information; and
- c. Protect any records and information the release of which could result in harm or inconvenience to any client.

2. The physical security and cybersecurity policies and procedures shall cover at least five functions:

a. The organizational understanding to manage information security risk to systems, assets, data, and capabilities;

b. The appropriate safeguards to ensure delivery of critical infrastructure services;

c. The appropriate activities to identify the occurrence of an information security event;

d. The appropriate activities to take action regarding a detected information security event; and

e. The appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

3. The investment advisor shall review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

B. The investment advisor shall deliver upon the investment advisor's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment advisor collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment advisor shall promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.